

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MICHAEL J. HOLLAND,)
HEATHER R. HOLLAND,)
STEVEN O. HOLLAND,)
GLENDA LEE KELLEY-HOLLAND,)
KYLE J. STORY, JOSHUA DAVIS,)
ALEX BORGES, MICHAEL D. ORZECH,)
PAMELA STORY, STEVEN KERN,)
CHERYL CHRISTMAN, CALVIN)
CHRISTMAN, BETTY JO JARVIS,)
ANDREW ELLIOT, LUCAS HEDRICK,)
NICHOLE KRUEGER, JOSEPH)
RABBITT, REBECCA FIESER,)
J. R., A Minor, By and through His)
Legal Guardians and Parents,)
Joseph Rabbitt and Rebecca Fieser,)
CHRISTENA CORBITT, ANTHONY)
DAVIS, JUSTIN SANCHEZ,)
CAMERON HEDRICK, MICHAEL)
EPPLER, JONATHAN WRIGHT,)
MARIE WRIGHT, THOMAS WRIGHT,)
PEGGY BALTIMORE, and)
PAUL BALTIMORE,)

Plaintiffs,)

vs.)

CITY OF GERALD, MISSOURI;)
OTIS SCHULTE, Individually, and in his)
official capacity as Mayor of)
the City of Gerald, Missouri;)
BRAD LANDWEHR, Individually, and)
in his official capacity as Alderman)
for the City of Gerald, Missouri;)
RICH JOHNSON, Individually, and)
in his official capacity as Alderman)
for the City of Gerald, Missouri;)

Cause Numbers **4:08 CV 707-DJS**
and **4:08 CV 713-CDP**
(Consolidated)

JURY TRIAL DEMANDED

DAVID LUECHTEFELD, Individually,)
and in his official capacity as Alderman)
for the City of Gerald, Missouri;)
DAN MAXWELL, Individually, and)
in his official capacity as Alderman)
for the City of Gerald, Missouri;)
RYAN Mc CRARY, Individually, and in)
his official capacity as the)
Chief of Police of the City of)
Gerald, Missouri;)
SCOTT RAMSEY, Individually, and in)
his official capacity as Assistant Chief)
of Police of the City of Gerald, Missouri;)
POLICE OFFICER SHANNON)
KESTERMONT, Individually, and in her)
official capacity as a Police Officer)
for the City of Gerald, Missouri;)
BILL A. JAKOB, a/k/a "SGT. JAKOB,")
Individually, and in his official capacity)
as an Agent, Employee, or Assignee)
for the City of Gerald, Missouri;)
POLICE OFFICER DERRICK LEWIS,)
Individually, and in his official)
capacity as a Police Officer for the)
City of Gerald, Missouri,)
)
Defendants.)
_____)

FIRST CONSOLIDATED COMPLAINT
VIOLATION OF CONSTITUTIONAL RIGHTS PURSUANT TO 42 U.S.C., §1983

COME NOW Plaintiffs, Michael J. Holland; Heather R. Holland; Steven O.
Holland; Glenda Lee Kelley-Holland; Kyle J. Story; Joshua Davis; Alex Borges;
Michael D. Orzech; Pamela Story; Steven Kern; Cheryl Christman; Calvin Christman;
Betty Jo Jarvis; Andrew Elliot; Lucas Hedrick; Nichole Krueger; Joseph Rabbitt;
Rebecca Fieser; J. R., a Minor, By and through His Legal Guardians and Parents, Joseph
Rabbitt and Rebecca Fieser; Christena Corbitt; Anthony Davis; Justin Sanchez; Cameron

Hedrick; Michael Epple; Jonathan Wright; Marie Wright; Thomas Wright; Peggy Baltimore; and, Paul Baltimore, by and through lead counsel Robert Herman of Schwartz, Herman & Davidson, along with co-counsel Daniel J. Briegel and Benjamin J. Hotz, of Briegel, Davis & Hotz, L.L.C., and for their cause of action against Defendants, City of Gerald, Missouri; Otis Schulte, Individually, and in his official capacity as Mayor of the City of Gerald, Missouri; Brad Landwehr, Individually, and in his official capacity as Alderman for the City of Gerald, Missouri; Rich Johnson, Individually, and in his official capacity as Alderman for the City of Gerald, Missouri; David Luechtefeld, Individually, and in his official capacity as Alderman for the City of Gerald, Missouri; Dan Maxwell, Individually, and in his official capacity as Alderman for the City of Gerald, Missouri; Ryan McCrary, Individually, and in his official capacity as the Chief of Police of the City of Gerald, Missouri; Scott Ramsey, Individually, and in his official capacity as Assistant Chief of Police of the City of Gerald, Missouri; Police Officer Shannon Kestermont, Individually, and in her official capacity as a Police Officer for the City of Gerald, Missouri; Bill A. Jakob, a/k/a "Sgt. Jakob," Individually, and in his official capacity as an Agent, Employee, or Assignee for the City of Gerald, Missouri; and, Police Officer Derrick Lewis, Individually, and in his official capacity as a Police Officer for the City of Gerald, Missouri, state to the Court as follows.

Parties, Jurisdiction and Venue

1. Michael J. Holland is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

2. Heather R. Holland is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

3. Steven O. Holland is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

4. Glenda Lee Kelley-Holland is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

5. Kyle J. Story is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

6. Joshua Davis is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

7. Alex Borges is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

8. Michael D. Orzech is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

9. Pamela Story is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

10. Steven Kern is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

11. Cheryl Christman is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

12. Calvin Christman is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

13. Betty Jo Jarvis is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

14. Andrew Elliot is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

15. Lucas Hedrick is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

16. Nichole Krueger is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

17. Joseph Rabbitt is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

18. Rebecca Fieser is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

19. J. R., a Minor, by and through his legal guardians and parents, Joseph Rabbitt and Rebecca Fieser, is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

20. Christena Corbitt is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

21. Anthony Davis is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

22. Justin Sanchez is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

23. Cameron Hedrick is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

24. Michael Epple is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

25. Jonathan Wright is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

26. Marie Wright is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

27. Thomas Wright is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

28. Peggy Baltimore is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

29. Paul Baltimore is a resident of the State of Missouri, residing within the geographical area of the Eastern District of Missouri.

30. Defendant City of Gerald, Missouri, (hereinafter “the City”) is a fourth-class city incorporated and operating under the laws of the State of Missouri.

31. Defendant Otis Schulte (hereinafter “Mayor Schulte”) is named in his individual and official capacities, and is the duly elected Mayor of the City of Gerald, Missouri.

32. Defendant Brad Landwehr (hereinafter “Alderman Landwehr”) is named in his individual and official capacities, and is a duly elected Alderman on the Board of Alderman for the City of Gerald, Missouri.

33. Defendant Rich Johnson (hereinafter “Alderman Johnson”) is named in his individual and official capacities, and is a duly elected Alderman on the Board of Alderman for the City of Gerald, Missouri.

34. Defendant David Luechtefeld (hereinafter “Alderman Luechtefeld”) is named in his individual and official capacities, and is a duly elected Alderman on the Board of Alderman for the City of Gerald, Missouri.

35. Defendant Dan Maxwell (hereinafter “Alderman Maxwell”) is named in his individual and official capacities, and is a duly elected Alderman on the Board of Alderman for the City of Gerald, Missouri.

36. Defendant Ryan McCrary (hereinafter “McCrary”) is named in his personal and official capacities and is the duly elected or appointed Chief of Police of the City of Gerald, Missouri.

37. Defendant Scott Ramsey (hereinafter “Lt. Ramsey”) is named in his personal and official capacities, and is the duly appointed Assistant Chief of Police of the City of Gerald, Missouri.

38. Defendant Shannon Kestermont (hereinafter “P.O. Kestermont”) is named in her personal and official capacities, and was at the time of the incident as alleged herein an employee, agent, servant, and/or assignee of the Police Department of the City of Gerald, Missouri.

39. Defendant Bill A. Jakob, a/k/a “Sgt. Jakob” (hereinafter “Jakob”) is named in his official and personal capacities, and was at the time of the incident as alleged herein an employee, agent, servant, and/or assignee of the City of Gerald, Missouri.

40. Defendant Derrick Lewis (hereinafter “P.O. Lewis”) is named in his personal and official capacities, and was at the time of the incident as alleged herein an employee, agent, servant, and/or assignee of the Police Department of the City of Gerald, Missouri.

41. All events related herein took place within the geographical boundaries of the Eastern District of Missouri, Eastern Division.

42. This matter is a Federal Question which arises under the United States Constitution, and 42 U.S.C., §1983, and this Court has original Jurisdiction over this matter pursuant to 28 U.S.C., §1331.

VIOLATION OF CIVIL RIGHTS PURSUANT TO 42 U.S.C., §1983.

43. During April and May of 2008, Defendant Jakob, acting as a commissioned law enforcement official under color of state law in concert with one or more of the co-Defendants McCrary, Lt. Ramsey, P.O. Kestermont, and P.O. Lewis, all themselves acting under color of State law: arrested some of the Plaintiffs without warrant and without probable cause; searched some of the Plaintiffs’ houses without warrant and without probable cause; detained some of the Plaintiffs in their houses against their will without warrant and without probable cause; applied handcuffs to some of the Plaintiffs; transported some or all of the Plaintiffs to the jail of the City of Gerald, Missouri, where they were held without warrant or probable cause; interrogated some of the Plaintiffs through the use of threats of bodily harm, threats of having the State take their children into custody, all forms of unconstitutional and unlawful coercion; denied some of the

Plaintiffs access to counsel; caused some of the Plaintiffs to be deprived of their freedom through the filing of knowingly false affidavits; caused some of the Plaintiffs to have their children taken into custody through the filing of knowingly false affidavits and complaints; and, destroyed and/or confiscated some of the Plaintiffs' property without due process of law in a manner not amenable to challenge by remedies available to Plaintiffs by State Law.

44. Defendant McCrary was the final policy making official for the Police Department of the City of Gerald, Missouri, and for the City of Gerald, in matters of operation of the police department and conduct of police officers, and the policies and practices he put into practice in the City of Gerald were unconstitutional and proximately caused the violations of Plaintiffs' constitutional rights as alleged herein.

45. The City of Gerald, Missouri; its Mayor; and, its Board of Alderman failed to establish policies or adopt adequate safeguards to ensure that only those persons qualified to be police officers under the laws of the State of Missouri are commissioned to be law enforcement officers by the City of Gerald, Missouri; and/or failed to supervise the Chief of Police to ensure that whatever policies the City had adopted with respect to the commissioning of qualified law enforcement personnel were enforced; and/or encouraged the Chief of Police to commission unqualified people as police officers in the City of Gerald, Missouri, all of which unconstitutionally and proximately caused the violation of Plaintiffs' constitutional rights as alleged herein.

46. The City of Gerald, Missouri; its Mayor; and, its Board of Alderman failed to adopt adequate safeguards or, in the alternative, their encouragement of the Chief of

Police to commission unqualified personnel was the product of deliberate indifference to known or obvious consequences to the constitutional rights of the Plaintiffs, such that it represented the *de facto* policy of the City of Gerald, Missouri, and was the proximate causation or moving force of the violations of Plaintiffs' constitutional rights.

47. The City of Gerald, Missouri; its Mayor; its Board of Alderman; the Chief of Police; and, the Assistant Chief of Police knew, or reasonably should have known, that Defendant Jakob was an imposter and unqualified as a police officer.

48. Mayor Schulte, Alderman Landwehr, Alderman Johnson, Alderman Luechtefeld, Alderman Maxwell, McCrary, and Lt. Ramsey knew, or should have known, that Defendant Jakob was not licensed by the State of Missouri, the United States, or any administrative agency as a police officer, federal agent, or investigator; and, their failure to properly verify the qualifications of Defendant Jakob prior to commissioning him to engage in police activities amounted to a deliberate indifference to the constitutional rights of Plaintiffs.

49. The City of Gerald, Missouri; its Mayor; its Board of Alderman; the Chief of Police; and, the Assistant Chief of Police placed Defendant Jakob into a position where they knew, or reasonably should have known, that he would violate the constitutional rights of Plaintiffs.

50. Defendant Jakob was commissioned and authorized to act as a law enforcement officer by the City of Gerald, Missouri; its Mayor; its Board of Alderman; the Police Chief of Gerald, Missouri; and, the Assistant Chief of Police of Gerald, Missouri, to act under color of law, in conjunction with, or on behalf of, police officers of

the City of Gerald, Missouri, to exercise of all police powers, including, but not limited to, the powers of arrest, search, interrogation, and detention of persons within the City jail.

51. Defendant Jakob is not, and has never been, licensed by the State of Missouri, the United States, or any state or federal administrative agency as a police officer, agent, or investigator; and, at no time did he possess the qualifications to hold such license or position, nor at any time was he legally licensed or authorized by the State of Missouri or the U.S. government to exercise the power of arrest, search, or seizure.

52. Defendant Jakob was not properly trained or qualified in the basics of police procedures or the protection of constitutional rights.

53. At all times relevant herein, Mayor Schulte, Alderman Landwehr, Alderman Johnson, Alderman Luechtefeld, and Alderman Maxwell approved the actions of Jakob by formally ratifying and employing Jakob as a police officer, after he had executed many of the unconstitutional acts set forth herein.

54. P.O. Kestermont was employed and authorized by the City of Gerald, Missouri; the Police Chief of Gerald, Missouri; and, the Assistant Chief of Police of Gerald, Missouri, to act under color of law, to exercise of all police powers, including, but not limited to, the powers of arrest, search, interrogation, and detention of persons within the City jail.

55. P.O. Lewis was employed and authorized by the City of Gerald, Missouri; the Police Chief of Gerald, Missouri; and, the Assistant Chief of Police of Gerald, Missouri, to act under color of law, to exercise of all police powers, including, but not

limited to, the powers of arrest, search, interrogation, and detention of persons within the City jail.

56. At all times relevant herein, Lt. Ramsey, P.O. Kestermont, Defendant Jakob, and P.O. Lewis acted under the direct command, supervision, and control of Defendant McCrary, and in compliance with the unconstitutional policies and practices he put into place in his official capacity as Chief of Police of the City of Gerald, Missouri.

57. The actions of Defendants McCrary, Jakob, Lt. Ramsey, P.O. Kestermont, and P.O. Lewis constitute a violation of Plaintiffs' rights under the Fourth Amendment of the United States Constitution as it is applied to the States through the Fourteenth Amendment.

58. Plaintiffs were damaged thereby in one or more of the following ways, to-wit:

- a. loss of constitutional rights;
- b. personal injury, emotional upset, humiliation and aggravation of pre-existing disease conditions;
- c. damage to personal property; and/or;
- d. theft of money and damage to property.

59. Mayor Schulte, Alderman Landwehr, Alderman Johnson, Alderman Luechtefeld, and/or Alderman Maxwell knew or was aware that the actions of any or all of Defendants as alleged herein violated Plaintiffs' constitutional rights in that they individually and/or collectively directed, authorized, or in some manner caused the

destruction of documents, files, records, or other tangible items, or in some manner made useless such documents, files, records or other tangible items.

60. The conduct of all Defendants was malicious and recklessly indifferent to Plaintiffs' constitutional rights.

WHEREFORE, Plaintiffs **pray for a trial by jury**; that this Court return its verdict against Defendants, jointly and severally, in their official and personal capacities for actual damages for violation of Plaintiffs' constitutional rights, punitive damages against all individual Defendants in their individual capacities to punish Defendants and to deter others from similar conduct, for their costs, and attorney fees pursuant to 42 U.S.C., §1988.

Respectfully submitted,

SCHWARTZ, HERMAN & DAVIDSON

By: /s/ Robert Herman
Robert Herman, #3382
621 North Skinker Boulevard
St. Louis, Missouri 63130
Ph: 314/862-0200
Fx: 314/862-3050
e-mail: bherman@621skinker.com

- and -

Benjamin J. Hotz, #534563
Daniel J. Briegel, #43153
BRIEGEL, DAVIS & HOTZ, LLC
102 E. Springfield, P.O. Box 522
Union, Missouri 63084
Ph: 636/583-6700
Fx: 636/584-0302
e-mail: bdalaw@charter.net
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 9, 2009, a true and correct copy of the foregoing document was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following counsel of record:

John N. Borbonus, Esq.
King, Krehbiel, Hellmich &
Borbonus, LLC
2000 South Hanley Road
St. Louis, Missouri 63144
Ph: 314/646-1110
Fx: 314/646-1122
e-mail: jborbonus@khhhb.com
*Attorneys for Defendants, City of Gerald,
MO; Otis Schulte; Brad Landwehr, Rich
Johnson; David Luechtefeld; Dan
Maxwell; and, Derrick Lewis*

Peter J. Dunne, Esq.
Jessica L. Liss, Esq.
Rabbitt, Pitzer & Snodgrass, P.C.
100 South Fourth Street
Suite 400
St. Louis, Missouri 63102-1821
Ph: 314/421-5545
Fx: 314/421-3144
e-mail: dunne@rabbittlaw.com
e-mail: liss@rabbittlaw.com
*Attorneys for Defendants, Ryan McCrary,
Scott Ramsey and Shannon Kestermont*

Mark H. Zoole, Esq.
Mark Zoole & Associates
1200 South Big Bend Boulevard
St. Louis, Missouri 63117
Ph: 314/647-1200
e-mail: zoole@sbcglobal.net
Attorney for Defendant Bill A. Jakob

By: /s/ Robert Herman